

**UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF WISCONSIN**

APPLETON PAPERS INC. and
NCR CORPORATION,

Plaintiffs,

No. 2:08-cv-00016-WCG

v.

PROPOSED ORDER

GEORGE A. WHITING PAPER
COMPANY, P.H. GLATFELTER
COMPANY, and MENASHA
CORPORATION,

Defendants.

PROPOSED ORDER

This matter comes before the Court on Defendant Menasha Corporation's Motion to Dismiss Counts I and III of Plaintiffs' Second Amended Complaint for lack of standing and failure to state a claim upon which relief can be granted.

Count I of Plaintiffs' Second Amended Complaint must be dismissed because, as evidenced by Plaintiffs' own allegations and matters of public record, Plaintiffs incurred costs involuntarily and lack standing to seek natural resource damages under Section 107(a)(4)(C) of the Comprehensive Environmental Response, Compensation, and Liability Act ("CERCLA"). Count III must be dismissed because the express language of Section 113 of CERCLA does not authorize declaratory judgments in Section 113 actions. Moreover, without the proper parties before this Court, a full and final allocation of future costs and damages is impossible.

Based on all the records and proceedings appropriately considered herein, including the submissions and oral arguments of counsel;

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IT IS SO ORDERED that Defendant Menasha Corporation's Motion to Dismiss is **GRANTED** and Counts I and III of Plaintiffs' Second Amended Complaint are **DISMISSED WITH PREJUDICE**.

Entered at Green Bay, Wisconsin this ____ day of _____, 2008.

BY THE COURT:

The Honorable William C. Griesbach
United States District Court Judge